

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA)	
)	
v.)	
)	Criminal No. 08-102
TYRONE KIRK,)	
)	
Defendant.)	

MEMORANDUM ORDER

Gary L. Lancaster,
Chief Judge.

September 8, 2010

Before the court is defendant's motion for retroactive application of sentencing guidelines to crack cocaine offense pursuant to 18 U.S.C. § 3582(c)(2). [Doc. No. 60]. On November 7, 2009, this court sentenced defendant to the statutory mandatory minimum of sixty (60) months. [Doc. No. 57].

Section 3582(c)(2) applies in situations where "a term of imprisonment based on a sentencing range has subsequently been lowered...." 18 U.S.C. § 3582(c)(2). Section 3582 does not apply to statutory mandatory minimum sentences. Defendant was sentenced under the statutory scheme and not under the advisory sentencing guidelines. The relief afforded under section 3582(c)(2) is not available to defendant in this case.

Accordingly, defendant's motion for retroactive application of sentencing guidelines to crack cocaine offense pursuant to 18 U.S.C. § 3582(c)(2) will be denied.

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G. H. Grant.

C. J.

All Counsel of Record